## REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed February 22, 2005. Reconsideration and allowance of the application and pending claims are respectfully requested.

### I. Claim Rejections - 35 U.S.C. § 102(e)

Claims 1-8, 13, 15, 16, 18, 21, 24, 27, and 32 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Scott, et al. ("Scott," U.S. Pat. No. 6,816,464). Applicant respectfully traverses this rejection.

It is axiomatic that "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration." *W. L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983). Therefore, every claimed feature of the claimed invention must be represented in the applied reference to constitute a proper rejection under 35 U.S.C. § 102(e).

In the present case, not every feature of the claimed invention is represented in the Scott reference. Applicant discusses the Scott reference and Applicant's claims in the following.

#### A. The Scott Disclosure

Scott discloses a method and system for routing packets over a packet-switched network to provide voice-over Internet protocol (VoIP) communications. Scott, column 1, lines 14-21. As is described by Scott:

> In summary, the routing manager of the invention connects to other modules of the gateway to access information about other

gateways and candidate routes to those gateways. In an alternative embodiment, the routing manager is able to perform tracing operations to determine the candidate routes to gateways. Once candidate routes are obtained, the routing manager tests the routes to determine their quality of service.

Candidate routes are assigned scores (also known as a level). The routing manager can be pre-set with various levels. Additionally, the routing manager can be pre-set with route ordering levels which prioritize the various aspects of a route. These aspects can include the level assigned to a tested route, but this is optional. In other embodiments, aspects include the address of the destination gateway, the cost involved to route to that gateway, etc.

In an embodiment, the routing manager provides the ordered routes before a user places a call. In another embodiment, the routing manager is configured to test candidate routes to a designation gateway whenever a user requests a connection to a call that may utilize that destination gateway.

In brief, a user of the invention is a caller known to the VoIP system. When the system receives a call request from the user, the system accesses user specific information (route ordering) and the destination address (i.e., the number being called/requested) to determine the candidate routes to use in connecting the call. The system tests the candidate routes to ensure call quality. The system may use route quality statistics, along with user specific information, to determine the proper route. These and additional embodiments and examples of the invention are now discussed in greater detail.
[Scott, column 5, line 56 to column 6, line 21]

As can be appreciated from the foregoing excerpt, Scott is only concerned about routing data over a network, as between two gateways. Scott provides details of such a network in relation to Figure 1:

FIG. 1 is a block diagram showing an example VoIP system 100, according to an embodiment of the invention, showing the ***network connectivity*** among the various components. It should be understood that the particular example VoIP system 100 in FIG. 1 is shown for illustrative purposes only and does not limit the invention.

The VoIP system 100 includes a ***network 102 which connects gateways 104, 106, and 108. Network 102 is a packet-switched network capable of serving as an intranet, internet, and/or connecting to the global Internet. Gateways*** 104, 106, and 108 can be physically located anywhere that allows connectivity with network 102.

Each of gateways 104, 106, and 108 are connected to a ***local exchange***. As shown in FIG. 1, gateway 102 is connected to local exchange 110; gateway 106 is connected to local exchange 112; gateway 108 is connected to local exchange 114.

Local exchanges 110, 112, and 114 are each connected to the ***PSTN***.

Telephones 116, 118, and 120 are each connected to a local exchange. Telephone 116 is connected to local exchange 110. Telephone 118 is connected to local exchange 112. Telephone 120 is connected to local exchange 114.

Telephones 116, 118, and 120 are representative of any number of telephones connected to a given local exchange. Typically, calls within a local exchange are toll-free or "local" calls. Calls from a telephone in one local exchange to a telephone in another local exchange are typically considered toll calls or long distance calls.
[Scott, column 6, lines 22-51 (emphasis added)]

From the above, it is clear that Scott's teachings are limited to network communications and, more particularly, to VoIP communications. Nowhere does Scott address routing data within a computer.

**B. Applicant's Claims**

Applicant claims methods and apparatus for transferring data. For example, claim 1, as amended, provides as follows (emphasis added):

> 1. A method for transferring data between first and second data processing applications, both of which operate on said data, said method comprising:
>
> measuring a first data transfer metric for a first data transfer pathway between said first processing application and said second processing application;
>
> measuring said first data transfer metric for a second data transfer pathway between said first processing application and said second processing application;
>
> comparing the first data transfer metric for the first pathway to the first data transfer metric for the second pathway; and
>
> selecting one of said first and second data transfer pathways for subsequent data transfers based upon the result of said comparing, and upon at least one user-specified data transfer rule;
>
> ***wherein said first and second processing applications and said first and second data transfer pathways are comprised by a single computer.***

As can be appreciated from the above text, claim 1 requires measuring a data transfer metric for first and second data transfer pathways between first and second processing applications, wherein the data transfer pathways and the processing applications are comprised by "a single computer". As is noted above, Scott clearly does not provide a teaching as to that aspect of claim 1.

The Scott disclosure is similarly deficient as to independent claims 5 and 13. Regarding claim 5, Scott does not teach measuring a data transfer metric for first and

second data transfer pathways between first and second processors, wherein the data transfer pathways and the processors are comprised by "a single computer". Regarding claim 13, Scott does not teach a "computer" having a plurality of data transfer pathways, first and second processors, and a data transfer manager that is configured to determine data transfer metrics for the data transfer pathways and select a data transfer pathway based upon at least one user-selected transfer attribute.

Due to the shortcomings of the Scott reference described in the foregoing, Applicant respectfully asserts that Scott does not anticipate Applicant's claims. Therefore, Applicant respectfully requests that the rejection of these claims be withdrawn.

## II. Claim Rejections - 35 U.S.C. § 103(a)

Claims 17, 19, 20, 22, 23, 25, 26, 28-31, and 33 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Scott. Applicant respectfully traverses this rejection.

As has been acknowledged by the Court of Appeals for the Federal Circuit, the U.S. Patent and Trademark Office ("USPTO") has the burden under section 103 to establish a *prima facie* case of obviousness by showing some objective teaching in the prior art or generally available knowledge of one of ordinary skill in the art that would lead that individual to the claimed invention. *See In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). The Manual of Patent Examining Procedure (MPEP) section 2143 discusses the requirements of a *prima facie* case for obviousness. That section provides as follows:

> To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teaching. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and reasonable expectation of success must be found in the prior art, and not based on applicant's disclosure.

In the present case, the prior art does not teach or suggest all the claim limitations, and there is no suggestion or motivation in the prior art for the proposed modification.

As is noted above in relation to independent claims 1, 5, and 13, Scott does not explicitly teach all of Applicant's limitations, including measuring a data transfer metric for data transfer pathways between processing applications or processors on a single computer. Applicant further notes that Scott does not suggest those limitations either. Again, the Scott disclosure is limited to network communications and, more particularly, to VoIP communications. Because of this, a person having ordinary skill in the art would not think to apply Scott's "route checking" for communications that occur between elements within a computer.

In regard to the Office Action's assertion that Scott teaches that his invention could be implemented in "alternative embodiments," Applicant notes that the portion of the Scott disclosure upon which the Office Action relies (i.e., column 4, lines 62-65) actually states the following (emphasis added):

> Furthermore, while the following description refers to the global Internet, it is not intended to limit the application of the invention. It will be apparent to one skilled in the relevant art how to implement the following invention, *in any computer network, combination of networks or other alternative embodiments*. For example, other Voice over Packet (VoP) networks include frame relay and asynchronous transfer mode (ATM) enabled networks.

From this passage, it is clear that Scott's "other embodiments" are other *network* embodiments, not an embodiment in which the communications at issue occur within a computer. Indeed, the above excerpt would appear to *teach away* from implementing Scott's method or system within a computer.

Again, Applicant notes that the suggestion for a modification proposed in a rejection must come from the prior art. No such suggestion is contained in the prior art. Given this lack of a suggestion, it appears clear that the only suggestion comes from Applicant's own disclosure. As is well established in the law, such hindsight to the Applicant's own disclosure is *per se* improper. *See Crown Operations International, Ltd. v. Solutia, Inc.*, 289 F.3d 1367, 62 USPQ2d 1917 (Fed. Cir. 2002).

In summary, it is Applicant's position that a *prima facie* for obviousness has not been made against Applicant's claims. Therefore, it is respectfully submitted that each of these claims is patentable over the Scott reference and that the rejection of these claims should be withdrawn.

## III. Canceled Claims

As identified above, claims 4, 8, 15, 17, 23, and 29 have been canceled from the application through this Response without prejudice, waiver, or disclaimer. Applicant

reserves the right to present these canceled claims, or variants thereof, in continuing applications to be filed subsequently.

## CONCLUSION

Applicant respectfully submits that Applicant's pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Assistant Commissioner for Patents, Alexandria, Virginia 22313-1450, on

5-11-05

Mary Meegan

Signature